

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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PERRY CHAMANI and FAY CHAMANI, )  
Plaintiffs, ) 2:12-CV-1197-LRH-PAL  
v. )  
BAC HOME LOANS SERVICING, LP fka )  
COUNTRYWIDE HOME LOANS )  
SERVICING, LP; *et al.*, )  
Defendants. )  
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)

ORDER

Before the court is defendant MTC Financial Inc., dba Trustee Corps’ (“Trustee Corps”) motion for summary judgment on plaintiffs Perry and Fay Chamanis (“the Chamanis”) second amended complaint (Doc. #48<sup>1</sup>). Doc. #89. The Chamanis did not oppose the motion.

Also before the court is defendant First Service Residential Realty, LLC, fka First Service Residential Reality, Inc.’s (“FSRR”) motion to dismiss the Chamanis’ second amended complaint pursuant to Rule 37 of the Federal Rules of Civil Procedure. Doc. #85.

**I. Facts and Procedural History**

This is a wrongful foreclosure and breach of contract action brought by the Chamanis against defendants. On or about October 15, 2007, the Chamanis obtained a residential loan from non-party Countrywide Bank, FSB (“Countrywide”) for property located in Las Vegas, Nevada.

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<sup>1</sup> Refers to the court’s docket entry number.

1 The loan was secured by a promissory note and deed of trust which designated the Mortgage  
 2 Electronic Registration System (“MERS”) as beneficiary under the deed of trust and non-party  
 3 ReconTrust Company, N.A. as trustee.

4 In mid 2009, the Chamanis defaulted on the mortgage note. Subsequently, on September 15,  
 5 MERS assigned the beneficial interest under the deed of trust to defendant BAC Home Loans  
 6 Servicing, LP (“BAC”). However, the assignment of the beneficial interest was not recorded until  
 7 July 8, 2011. Also on September 15, 2009, defendant BAC substituted defendant Trustee Corps as  
 8 the trustee under the deed of trust. This substitution of trustee was recorded on November 5, 2009.

9 On September 17, 2009, defendant BAC executed a notice of default and election to sell  
 10 which was recorded on September 18, 2009. On April 9, 2010, the mandatory Nevada Foreclosure  
 11 Mediation Program issued a certificate allowing BAC to proceed with the non-judicial foreclosure.  
 12 On July 1, 2011, defendant Trustee Corps, as the substituted trustee, executed a notice of trustee’s  
 13 sale which was recorded on July 8, 2011. A second notice of trustee’s sale was recorded on  
 14 March 28, 2012, setting the trustee’s sale for April 27, 2012. At the trustee’s sale, defendant  
 15 AH4R-NV 2, LLC purchased the property and recorded a deed of sale on May 18, 2012.

16 On April 26, 2012, prior to the trustee’s sale, the Chamanis filed a complaint against  
 17 defendants for wrongful foreclosure. Doc. #1, Exhibit A. Subsequently, on December 4, 2014, the  
 18 Chamanis filed the underlying second amended complaint alleging eight (8) causes of action  
 19 against defendants: (1) violation of NRS 107.080; (2) breach of contract; (3) waiver of default;  
 20 (4) breach of the covenants of good faith and fair dealing; (5) quiet title; (6) slander of title;  
 21 (7) violation of NRS 107.080(5) & (7); and (8) unlawful detainer. Doc. #48. In response, defendant  
 22 Bank of America (“BOA”), as successor in interest for defendant BAC, filed a motion to dismiss the  
 23 second amended complaint (Doc. #53) which was granted by the court (Doc. 73). Thereafter,  
 24 defendants Trustee Corps and FSRR filed the present motions. Doc. ##85, 89.

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1       **II. Legal Standard**

2              Summary judgment is appropriate only when the pleadings, depositions, answers to  
 3 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no  
 4 genuine issue as to any material fact and that the [moving party] is entitled to judgment as a matter  
 5 of law.” Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together  
 6 with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable  
 7 to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
 8 587 (1986); *Cnty of Tuolumne v. Sonora Cnty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

9              The moving party bears the burden of informing the court of the basis for its motion, along  
 10 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,  
 11 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party  
 12 must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could  
 13 find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259  
 14 (6th Cir. 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

15              To successfully rebut a motion for summary judgment, the non-moving party must point to  
 16 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might  
 17 affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
 18 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary  
 19 judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding  
 20 a material fact is considered genuine “if the evidence is such that a reasonable jury could return a  
 21 verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla  
 22 of evidence in support of the plaintiff’s position will be insufficient to establish a genuine dispute;  
 23 there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at 252.

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1       **III. Discussion**

2           **A. Violation of NRS 107.080**

3       In their second amended complaint, the Chamanis allege that defendants conducted the  
 4 foreclosure in violation of NRS 107.080. Specifically, the Chamanis charge that defendant BAC  
 5 was without authority to record the notice of default because at the time of the recording the  
 6 mortgage note had not yet been properly assigned to BAC. As a result, the Chamanis contend that  
 7 the notice of default is invalid and all subsequent foreclosure activities are likewise invalid. The  
 8 court disagrees.

9       First, the court notes that neither defendant Trustee Corps nor defendant FSRR had any part  
 10 in the recording of the original notice of default. As such, the second amended complaint fails to  
 11 state a claim against these defendants. Second, the court has already addressed this issue at length  
 12 in the court's order granting BOA's motion to dismiss. *See Doc. 73.* In that order, the court found  
 13 that defendant BAC substantially complied with the provisions of NRS 107.080 in recording the  
 14 notice of default even though the assignment to BAC had not yet been recorded. *Id.* Therefore, the  
 15 court finds that the Chamanis fail to state a claim for relief under NRS 107.080.

16           **B. Breach of Contract**

17       The Chamanis' second cause of action is for breach of contract. Here, it is undisputed that  
 18 neither defendant Trustee Corps nor defendant FSRR was a party to any contract with the  
 19 Chamanis. Therefore, the court shall dismiss this claim as to these defendants.

20           **C. Waiver of Default**

21       The Chamanis' third cause of action alleges that subsequent to the recording of the notice of  
 22 default, defendant BAC accepted several mortgage payments from the Chamanis. The Chamanis  
 23 argue that this conduct amounts to a waiver of their default. However, the Chamanis have failed to  
 24 allege that their payments fully cured the default. Further, this claim is solely against dismissed  
 25 defendant BAC for its acceptance of the mortgage payments and the Chamanis fail to allege any  
 26 conduct by either defendant Trustee Corps or FSRR. In fact, it is undisputed that neither defendant

1 Trustee Corps nor FSRR accepted any mortgage payments. Therefore, the court shall dismiss this  
 2 claim against these defendants.

3 **D. Good Faith Claim**

4 The Chamanis' fourth cause of action alleges that defendant BAC breached its duty to act in  
 5 good faith after proceeding with the foreclosure despite accepting payments subsequent to the notice  
 6 of default. As addressed above, this claim is solely against dismissed defendant BAC for its  
 7 acceptance of the mortgage payments and the Chamanis fail to allege any conduct by either  
 8 defendant Trustee Corps or FSRR.

9 **E. Quiet Title**

10 The Chamanis' fifth cause of action is for quiet title. In Nevada, a quiet title action may be  
 11 brought by "any person against another who claims an estate or interest in real property, adverse to  
 12 the person bringing the action, for the purpose of determining such adverse claim." NRS 40.010. "In  
 13 a quiet title action, the burden of proof rests with the plaintiff to prove good title himself." *Breliant*  
 14 v. *Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996). "Additionally, an action to quiet title  
 15 requires a plaintiff to allege that she has paid any debt owed on the property." *Lalwani v. Wells*  
 16 *Fargo Bank, N.A.*, No. 2-11-cv-0084, 2011 WL 4574338, at \*3 (D. Nev. Sept. 30, 2011) (citing  
 17 *Ferguson v. Avelo Mortg., LLC*, 126 Cal. Rptr. 3d 586, 589 (Cal. Ct. App. 2011)).

18 Here, the Chamanis have conceded that they were in default of their mortgage obligations.  
 19 Thus, they cannot claim good title to the property as a matter of law. See *Lalwani*, 2011 WL  
 20 4574338, \*3. Further, it is undisputed that neither Trustee Corps nor FSRR claim any interest in the  
 21 property. In fact, the only party claiming an adverse interest to the property is defendant AH4R-  
 22 NV 2, LLC, the third party purchaser. As such, the court finds that Trustee Corps and FSRR are  
 23 entitled to judgment on this claim.

24 **F. Slander of Title**

25 The Chamanis' sixth cause of action is for slander of title alleging that defendants slandered  
 26 their title to the property. To succeed on a slander of title claim, a plaintiff must show "false and

1 malicious communications, disparaging to one's title in land, and causing special damages." *Exec.*  
2 *Mgmt. Ltd. v. Ticor Title Co.*, 963 P.2d 465, 478 (Nev. 1998).

3 Here, the recorded notice of default and notice of trustee's sale are not false and malicious  
4 communications disparaging the Chamanis' title. First, it is undisputed that the Chamanis were in  
5 default at the time both documents were recorded. Second, the court has already found that  
6 defendant BAC did not waive the Chamanis' default. *See* Doc. #73. Therefore, the court finds the  
7 notice of default and notice of trustee's sale do not make any false statement about title to their  
8 property.

9 **G. NRS 107.080(5) & (7)**

10 The Chamanis' seventh cause of action alleges defendants failed to comply with the  
11 requirements of NRS 107.080(2), and thus, pursuant to NRS 107.080(5) & (7), the court must  
12 declare the trustee sale void. Because the court has already rejected the Chamanis' first claim for  
13 violation of NRS 107.080, the Chamanis cannot state a claim for violation of either NRS  
14 107.080(5) or (7) as it relates to defendants Trustee Corps and FSRR. Therefore, the court shall  
15 enter judgment in defendants' favor on this claim.

16 **H. Unlawful Detainer**

17 The Chamanis' eighth cause of action is for unlawful detainer. However, it is undisputed  
18 that this claim is not directed against defendant Trustee Corps. Therefore, the court shall dismiss  
19 this claim as to defendant Trustee Corps.

20 As to defendant FSRR, the only allegation is that defendant FSRR participated in the  
21 eviction of plaintiffs from the property after it was purchased by defendant AH4R-NV 2, LLC at  
22 the properly noticed and recorded trustee's sale. However, these allegations are insufficient to  
23 allege a claim for unlawful detainer as the Chamanis have failed to establish that they had any right  
24 to access or control the property after it was sold at the trustee's sale. In fact, it is undisputed that  
25 the Chamanis were in default and that the property was sold to defendant AH4R-NV 2, LLC. As  
26 addressed above, the Chamanis have not established any right to the property or to quiet title in

1 their name. *See Supra* Section E. As such, the Chamanis cannot state a claim for unlawful detainer  
2 as a matter of law.

3 **I. Dismissal Pursuant to Rule 37**

4 As an alternative argument for dismissal, defendant FSRR contends that this action should  
5 be dismissed because the Chamanis have failed to respond to FSRR's discovery requests or to  
6 attend scheduled depositions. Because the court has already found that the second amended  
7 complaint fails to state any claim against defendant FSRR, the court finds that this alternative  
8 argument is moot.

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10 IT IS THEREFORE ORDERED that defendant's motion for summary judgment (Doc. #89)  
11 is GRANTED. Defendant MTC Financial Inc., dba Trustee Corps is DISMISSED as a defendant in  
12 this action.

13 IT IS FURTHER ORDERED that defendant's motion to dismiss (Doc. #85) is GRANTED.  
14 Defendant First Service Residential Realty, LLC, fka First Service Residential Reality, Inc., is  
15 DISMISSED as a defendant in this action.

16 IT IS SO ORDERED.

17 DATED this 26th day of June, 2015.

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19 LARRY R. HICKS  
20 UNITED STATES DISTRICT JUDGE

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